In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 446

PAUL AHRENS ET AL., PETITIONERS

v.

TOM C. CLARK, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The nature of the above captioned proceeding and its position as the latest in an unsuccessful series of substantially identical litigations, as well as the legal issues raised by the petition for certiorari herein, are discussed in the memorandum which we have heretofore filed in opposition to petitioners' application for a stay and to which the Court's attention is respectfully directed. Memorandum in Opposition to Petitioners' Application for a Stay, pp. 1–6. For the reasons therein set forth, we submit that the petition for certiorari herein is without merit.

See also Respondent's Brief in Opposition pp. 3–5 in *United States* ex rel. *Kessler* v. *Watkins*, No. 414, this Term, certiorari denied on December 8, 1947.

However, we again call to the Court's attention that the heart of this proceeding does not lie in the issues raised by the petition for certiorari but in the accompanying application for a stay which petitioners seek under their interpretation of Rule 45 (1) of this Court. As shown by our memorandum in opposition to the application for a stay (pp. 6–8), this series of mass litigations covers all but a few of the German alien enemies held on Ellis Island. Lower courts have been and can be confronted with continual relitigation. In the absence of decision by this Court on the Rule 45 (1) question, petitioners' contention as to the scope of that Rule may work, and in all probability will work, a continual automatic frustration of the administration of the alien enemy program by the executive branch. As stated above, we believe the petition for certiorari to be without merit. But we strongly urge that the problem raised by petitioners' application for a stay be given independent and clear determination. Mere denial of the petition for certiorari, or denial of the petition for certiorari by order which also denies the motion for a stay, may not serve to resolve the problem which confronts lower courts.

Accordingly, we again request that petitioners' application for a stay order under Rule 45 (1) be given independent determination by this Court. And we submit that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY, 1948.

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